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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RKF RETAIL HOLDINGS, LLC, a Delaware
limited-liability company,

Plaintiff,

v.

TROPICANA LAS VEGAS, INC., a Nevada
corporation,

Defendant.

TROPICANA LAS VEGAS, INC., a Nevada
corporation,

Counterclaimant,

v.

RKF RETAIL HOLDINGS, LLC, a Delaware
limited-liability company; DOES 1-5; and
ROES 1-5, inclusive

Counterdefendants.

Case No.: 2:14-cv-01232-APG-GWF

**STIPULATION AND ORDER
TO EXTEND DISCOVERY CUT-OFF
AND RELATED DEADLINES**

(Second Request)

Pursuant to Section 3(a)(vi) of the Court's Scheduling Order dated November 3, 2014 (#21), the Parties' Status Report dated February 13, 2015 (#22), and the Stipulation and Order to Extend Discovery Cut-Off and Related Deadlines dated March 20, 2015 (#24), Plaintiff/Counterdefendant RKF Retail Holdings, LLC ("RKF") and Defendant/Counterclaimant Tropicana Las Vegas, Inc. ("Tropicana") (collectively the "Parties"), by and through their respective counsel hereby make joint application to further extend the discovery cut-off period and related deadlines in the above-captioned matter. Pursuant to the Stipulation and Order to Extend Discovery Cut-Off and Related Deadlines (#24): (i) the current discovery cut-off is September 15, 2015; (ii) the deadline to file any motions seeking to add parties or amend the pleadings was June 17, 2015; (iii) the deadline for initial expert disclosures was July 16, 2015; (iv) the deadline for filing rebuttal expert reports is August 15, 2015; and (v) the deadline for filing dispositive motions is October 15, 2015.

Pursuant to LR 26-4, the Parties seek extensions of the foregoing deadlines for the reasons set forth below.

A. Discovery Completed To Date

The Rule 26(f) conference was held on October 14, 2014. Thereafter, each party served their respective Initial Disclosures.

On November 4, 2014, RKF served its First Set of Requests for Production of Documents. Tropicana served its written Responses on December 19, 2014. On February 24, 2015, Tropicana served its first document production in response to these requests, including 146,966 pages and numerous native documents.

On January 22, 2015, Tropicana served its First Set of Requests for Production and First Set of Interrogatories. On February 23, 2015, RKF served its written Responses, and two weeks later, on March 10, 2015, made its first production of documents in responses to those requests, including 17,219 pages and numerous native documents.

On March 11, 2015, RKF served its Second Set of Requests for Production and First Set of Interrogatories. Tropicana served its written Responses on April 24, 2015.

On March 20, 2015, the Parties submitted their first joint request for an extension of the

1 discovery schedule, extending the discovery cut-off from April 15, 2015 to its current September
2 15, 2015.

3 On June 12, 2015, Tropicana served a supplemental production of documents addressing
4 technical issues in connection with Tropicana's first production of documents. This production
5 also included documents responsive to RKF's Second Set of Requests for Production. In total,
6 45,994 pages were produced as part of this supplemental production.

7 On July 16, 2015, Tropicana served its Initial Expert Witness Disclosure for expert
8 testimony from Soozie Jones Walker.

9 RKF served a supplemental production of documents responsive to Tropicana's First Set
10 of Requests for Production of Documents on July 22, 2015, constituting an additional 13,267
11 pages of documents.

12 During July, RKF has also served six subpoenas requesting documents and testimony
13 from nonparties in this matter. RKF has yet to receive responses from five of these nonparties.
14 One nonparty has indicated that it will produce documents, and one nonparty has served an
15 objection to the subpoena, citing confidentiality and burden, dated August 3, 2015.

16 B. Discovery Remaining To Be Completed

17 There is substantial outstanding discovery still to be completed.

18 The parties are still analyzing the voluminous productions to date, and have identified a
19 number of issues, *inter alia*, those concerning production scope and privilege logs. The parties
20 have been reviewing the hundreds of thousands of pages of documents produced in the matter
21 and conferring regarding technical difficulties or perceived deficiencies in productions.

22 RKF still awaits initial responses on several nonparty subpoenas, and must work through
23 the objections put forth by at least one nonparty.

24 Based upon the nonparty responses, the parties anticipate that further discovery requests
25 will arise.

26 Once document discovery is complete, the parties expect dozens of depositions of both
27 parties and nonparties will be scheduled at locations throughout the country. Expert discovery
28 must also be taken. Given the coordination of counsel and witnesses through multiple

jurisdictions, it is expected that the orderly completion of depositions will take significant time.

C. Reasons For The Requested Extension

As an initial matter, the parties request additional time given that document discovery has taken longer to complete than initially expected. As part of its supplemental production, Tropicana worked to resolve technical issues contained in its initial production and reviewed more than two million additional documents, an endeavor which lasted through the first two months of the extended discovery period. Tropicana's subsequent production was served in June 2015. In response to this production, RKF made a supplemental production of documents in July 2015.

The parties have to date successfully conferred and cooperated to resolve discovery disputes so as to avoid burdening the Court with discovery motions, but these disputes have taken time to resolve.

The substantial size of the productions in the matter has also contributed to the need for additional time. To date, there have been hundreds of thousands of pages produced that require thousands of hours of attorney time to review at a standard review rate. For each instance of a problem or deficiency in the productions, significant time has been required to investigate and resolve. These delays have also delayed working through issues related to privilege designations in connection with the document productions.

As a result of information gleaned from the document productions, RKF served numerous non-party subpoenas in July 2015. RKF believes that the evidence to be obtained from these nonparties is central to the issues in the action, and expects to receive significant volumes of additional documents for review from the nonparties. To wit, evidence obtained concerning one nonparty led RKF to file a related action for tortious interference on July 29, 2105 in this Court: *RKF Retail Holdings, LLC v. Eastern Real Estate LLC*, 2:15-cv-01446-RCH-CWH. The defendant in that action is also the subject of a nonparty subpoena in this action. It also appears that at least some of the nonparties who have received subpoenas are lodging objections, which must be resolved before document discovery can come to a close.

Once the party and nonparty document discovery issues can be sorted through, the parties

1 must turn to depositions and expert discovery. Especially given the numerous foreign deponents
 2 and nonparty witnesses, initial scheduling attempts indicate that this portion of discovery will
 3 take effort and time to arrange in an orderly fashion.

4 The parties have worked diligently to move discovery forward, and to do so without
 5 burdening the Court with motion practice, and wish to continue in this practice. For these
 6 reasons, the parties jointly respectfully submit the following proposed extension to the
 7 Scheduling Order.

8 **D. Proposed Schedule For Completing All Remaining Discovery**

9 Based on the foregoing, the parties have stipulated to the following proposed schedule for
 10 the remaining discovery, which amounts to a six-month extension of the dates in the Stipulation
 11 and Order to Extend Discovery Cut-Off and Related Deadlines (#24):

12 1. **Discovery Cut-Off Date:** The cut-off date for discovery shall be **March 15,**
 13 **2016.**

14 2. **Amending the Pleadings and Adding Parties:** All motions to amend the
 15 pleadings or to add parties shall be filed not later than **December 16, 2015**, 90 days prior
 16 to the scheduled close of discovery.

17 3. **Fed. R. Civ. P. 26(a)(2) Disclosures (Experts):** Tropicana served an initial
 18 expert witness disclosure on July 16, 2015. RKF's disclosure concerning any rebuttal
 19 expert shall be made no later than **February 15, 2016**, 30 days prior to the close of
 20 discovery.

21 4. **Dispositive Motions:** The date for filing dispositive motions shall not be later
 22 than **April 14, 2016**, 30 days after the discovery cut-off date. In the event that the
 23 discovery period is extended from the discovery cut-off date set forth in this Discovery
 24 Order, the date for filing dispositive motions shall be extended to be not later than 30
 25 days from the subsequent discovery cut-off date.

26 5. **Pretrial Order:** The date for filing the joint pretrial order shall not be later than
 27 **May 16, 2016**, 32 days after the cut-off date for filing dispositive motions. In the event
 28 that dispositive motions are filed, the date for filing the joint pretrial order shall be

suspended until 30 days after decision on the dispositive motions or until further order of the court. In the further event that the discovery period is extended from the discovery cut-off date set forth in this Discovery Order, the date for filing the joint pretrial order shall be extended in accordance with the time periods set forth in this paragraph.

6. **Extensions or Modifications of the Discovery Plan and Scheduling Order:**

Any stipulation or motion must be made not later than **February 24, 2016**, 20 days before the discovery cut-off date.

The Parties respectfully submit that the length of the extended deadlines is proper, is requested in good faith, and is requested only after the Parties have already spent significant effort working to complete discovery under the initial deadlines.

Dated this 14th day of August 2015.

RFK RETAIL HOLDINGS, LLC

By: /s/ J. Colby Williams

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28
IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: August 18, 2015